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APPENDIX 1

Internal Revenue Service General Counsel - Memorandum 27626 (Jan. 15, 1953)

C:BRIEF
A-454559

In re: * * *

CHIEF COUNSEL
BUREAU OF INTERNAL REVENUE

NORMAN A. SUGARMAN
Assistant Commissioner (Technical)

Attention: *Head, Technical Rulings Division*

Reference is made to the proposed ruling letter (IT:AP:CA:STC:CB) addressed to the Internal Revenue Agent in Charge, * * * Such letter, submitted for review, concludes with the statement:

> "It is * * * believed that the Bureau should not continue in the efforts to assert gift tax liability in this case."

While this office is in agreement with the conclusion reached in the proposed letter, it is not in entire agreement with the reasoning used in reaching such conclusion. Accordingly, it is suggested that the proposed letter be revised to read substantially as follows:

> "Reference is made to your letter of March 23, 1951, Bureau letter of August 16, 1951, and your letter of

May 26, 1952. A conference was held in this office on July 10, 1952, the alleged donor being represented by * * * and * * *

"During the course of the conference, counsel for the estate submitted memoranda, and an affidavit executed by * * * The affidavit states that the alleged donor made the following declaration when the will was read to him on the day it was found:

> "I have got more than I can attend to. I don't want to be worried about settling the estate and I don't want any of * * * property. Do I have to take it?"

"Upon being advised by counsel that he could renounce any and all rights he had under the will, * * * on August 9, 1946, the day after the will was discovered, filed an instrument of renunciation with the probate court having jurisdiction over the administration of testator's estate. Such document read as follows:

"Whereas * * * late of the county of * * * is dead, leaving a last will and testament dated the 18th day of September 1924, which will named * * * as executor; and whereas under the terms of said will the bulk of the estate of said * * * was willed, given and bequeathed unconditionally to * * * and whereas said will was made many years ago and since said time conditions have changed;

"I, the said * * * do hereby renounce my right to qualify as executor under said will in favor of * * * and request you to appoint said * * * as administrator of the estate of * * * with will annexed; and further believing it to be the wishes of my said nephew * * *

for his brothers and sisters to eventually inherit his property, I therefore renounce my rights to inherit under said will or to receive any benefits under said will, and I specifically decline and refuse to receive any of the estate of said * * * under said will, to the end that his brothers and sisters may inherit the residue of his estate directly from him just as if he had died intestate as to the residue of his estate that was devised to me, and I hereby request the court and the administrator to settle the estate of * * * in accordance with the terms of his will except that as to such parts of his estate that I would have inherited shall pass direct to the heirs of * * * just as if he had died intestate as to the residue of his estate, it being my desire and wish that his brothers and sisters shall immediately inherit direct from him all real and personal property, subject only to his specific bequests in total amount of * * * as specifically provided in his will. The consideration for this is my love and affection for my nephews and nieces referred to.

"Witness my hand and seal this 9th day of August 1946.

* * * (SEAL)'

"On August 12, 1946, the appropriate probate court decreed that—

"* * * so much of said will as left any property to * * * is null and void and of no effect to pass title to any property real or personal or mixed of the estate of * * * / * * *

'all of said property of * * * except the specific devises of a total amount of * * * shall descend to

and be distributed between the heirs at law of * * * just as if said * * * had died intestate as to the residue of his estate.'

"Counsel stated that the alleged donor was an uncle of the decedent * * * that they had been business associates, and that neither left a wife nor children. Counsel submitted, also, a chart showing the heirs of the decedent * * * and those of the alleged donor, their relationship to each heir and the amount inherited. This chart shows eleven persons who were heirs and natural objects of the bounty of both decedent * * * and the alleged donor, and thus received benefits as a result of the renunciation. There is shown, also, three persons who were the heirs of the decedent * * * but not heirs of the alleged donor. Those persons benefited by the renunciation, of course. There is shown, as well, ten persons who were the heirs of the alleged donor, but not heirs of the decedent * * *. They were the natural objects of the alleged donor's bounty, and because of his renunciation, lost potential interests in property. In other words, this case is not the type wherein a renunciation causes property to pass to the natural objects of the bounty of decedent * * * who are the same natural objects of the bounty of the alleged donor.

"In *Perkins v. Isley*, 32 S.E. (2) 588, a North Carolina case, it is held that renunciation of a bequest is not a conveyance requiring the signature of the spouse of the party renouncing. The court said: 'The right to denounce a devise or legacy is a natural one and needs no statutory authorization. An heir at law is the only person, who, by the common law, becomes the owner of land without his own agency or consent. A title by deed or devise requires the assent of the grantee or devisee before it can take effect. But

in the case of descent, the law casts the title upon the heir. 3 Washburn, 5th Ed.Sec. 4, p. 6.'

"It is therefore believed that the Bureau should not [continue in its efforts to] assert gift tax liability in this case. Such conclusion is founded on principles of law to the effect that the rights in the renounced property here stem from the will, the instrument of transfer, and not from the decedent * * * who renounced, nor from the * * * laws of succession. *Harris v. Commissioner*, 340 U.S. 111 (1950); *Ianthe B. Hardenbergh, supra*. The object of a renunciation or disclaimer under a will is not to transfer property, but to prevent a particular transfer of property. *In re Myer's Estate*, 238 P.2d 597 (1951). A transfer of property can be made only by an instrument adapted to that purpose. *In re Myer's Estate, supra*. The estate and gift tax provisions of the Code do not contemplate the taxing of testamentary gifts by renunciation. *Brown v. Routzahn*, 68 F. (2d) 914, (CA-9, 1953), cert. denied, 290 U.S. 641. The right which the beneficiary holds is the right to accept such bequest or devise or the equal right to reject. *Brown v. Routzahn, supra*. When a devisee accepts a devise, his title relates back to the death of the testator, but when there is a renunciation, the devise never takes effect, title never vests in the devisee, and such renunciation is effective as of the date of the testator. *Perkins v. Isley, supra*.

"The cases of *William L. Maxwell*, 17 T.C. No. 196 and *Ianthe B. Hardenbergh*, 17 T.C. No. 166, aff'd, 198 F. (2d) 63 (CA-8, 1952) involved instances of renunciation of an inheritance rather than a legacy, bequest, or devise. The question at issue in the *Maxwell* case arose in the state of California as did the question *In re Kalt's Estate*, 108 P. 2d 401, cited in Bureau letter of August 16, 1951. However, the *Kalt* case can be distinguished on its facts, wherein the

legatee renounced four years after the decedent's death, and admittedly took such action to defeat claims of his judgment creditors.

"The papers transmitted with your letter of May 26, 1952 are enclosed herewith. There is transmitted, also, the affidavit of * * * four memoranda submitted by counsel, and the chart previously referred to. You are requested to return these enclosures when they have served their purpose in your office."

The administrative file is returned herewith.

/s/Charles W. Davis
CHARLES W. DAVIS
Chief Counsel
Bureau of Internal Revenue

Internal Revenue Agent in Charge

* * *

Dep. Comr. McLarney

* * *

Reference is made to your letter of March 23, 1951, Bureau letter of August 16, 1951, and your letter of May 26, 1952. A conference was held in this office on July 10, 1952, the donor being represented by * * * and * * *.

The estate submitted several memoranda, also an affidavit of * * *. The affidavit is to the effect that the donor's real reason for the renunciation was, not that he desired the testator's heirs to receive the property, but that he already had more property than he could attend to, did not want to be worried about the estate and did not want any of the testator's property; that his counsel prepared the necessary documents and inserted language not actually necessary. Counsel also stated that the donor was decedent's uncle, that they had been business associates and that neither left any wife or children.

The Maxwell case, 17 T.C.—No. 169, and the Hardenberg case, 17 T.C. 166, recently affirmed, were instances of renunciation, not of a devise, bequest or legacy, but of an inheritance, which feature was emphasized by the Court. It might be noted that the Maxwell case arose in California from which State arose the Halt case, 106 Pac. (2) 401, cited in Bureau letter of August 16,1951, which holds contrary to the weight of authority.

It is probable that the question is not one of local law, but Perkins v. Isley, 32 S.W. (2) 588, a North Carolina case, holds that a renunciation of a bequest is not a conveyance requiring the signature of the spouse of the party renouncing. The Court said: "The right to renounce a devise or legacy is a natural one and needs no statutory authorization. 'An heir at law is the only person, who, by the common law, becomes the owner of land without his own agency or consent. A title by deed or devise requires the assent of the grantee or devisee before it can take effect. But in the case of descent, the law casts the title upon the heir. He cannot disclaim if he would.' 3 Washburn, 5th Ed., Sec. 4, p. 6."

At the conference counsel submitted a chart showing the heirs of the testator and those of the donor, the relationship to each and the amount inherited. This chart shows eleven persons who were heirs of both the testator and donor. They were the natural objects of the bounty of both the testator and the donor and benefited by the renunciation. There are also shown three persons who were the heirs of the testator but not of the donor and they of course benefited by the renunciation. There are also shown ten persons who were the heirs of the donor but not of the testator. They were the natural objects of the donor's bounty but did not benefit, in fact lost, by the renunciation. In other words, this is not the case as is sometimes found, of the renunciation causing the passing to the natural objects of the parties renouncing.

As you are undoubtedly aware, there are often facts which may be technically immaterial but may have a psychological effect. For example, assume a case where there is a specific bequest to A and residuary bequest to his children. A's renunciation causes his bequest to fall into

the residue, thus benefiting the natural objects of his bounty. Assume another case in which as a result of the renunciation the property passes, not to the natural objects of the bounty of the renouncing party, but to the natural objects of the testator's bounty. In the former case the renunciation has much more the appearance of a gift than in the latter case. In this case the renunciation benefits some persons who were the natural objects of the bounty of both parties and some who were the natural objects of only the testator's bounty, and there are some persons who were the natural objects of the donor's bounty but would not benefit but in fact lost as a result of renunciation. These facts may or may not be material, but very probably would have at least a psychological effect. A case in which the parties benefited by the renunciation are the natural objects of the bounty of the renouncing party, would be a better case to take into court. Also, on the power of appointment theory, there is some question as to whether the renunciation was an exercise or release of the power. The Bureau's case would be stronger had the power been created after the 1942 Act, and the renunciation after May 31, 1951.

It is therefore believed that the Bureau should not continue in its efforts to assert gift tax liability in this case. This is not to be taken as indicating an opinion that the position taken in Bureau letter of August 16, 1951, was incorrect. There is considerable basis for assertion of gift tax liability on three grounds: (1) That, even under general rules and under property law, renunciation is a gift; (2 that, assuming that for general purposes or purposes of property law renunciation is not a gift, it is a gift for Federal gift tax purposes; (3) that renunciation was an exercise of a power of appointment. The only reason for the Bureau's action in this case is that it is believed advisable to wait for a better case to get into court.

The papers transmitted with your letter of May 26, 1952, are herewith enclosed. There are also transmitted the affidavit of * * * four memoranda submitted by counsel and the chart. You are requested to return these enclosures when they have served their purpose in your office.

Deputy Commissioner

Enclosure

APPENDIX 2

CC:I:CAL
A-499687

In re: Legacy, Renunciation of

JUSTIN F. WINKLE

Assistant Commissioner (Technical)—

Attn: *Chief, Bulletin Branch*

Reference is made to the proposed Revenue Ruling relative to the Federal gift tax consequences of a renunciation, release or relinquishment by a legatee or divisee under a will or by a beneficiary under a policy of insurance. With the exception of the last two paragraphs, the proposed Revenue Ruling is substantially identical to the Revenue Ruling suggested by this office in G.C.M. 29032, dated August 16, 1955.

In a memorandum (T:R:EG:CP) dated December 6, 1955, the Director, Tax Rulings Division suggests omission of the term "bona fide" appearing in the next to last paragraph and headnote of the Revenue Ruling, and omission of the phrase "Since this Ruling represents a change in policy" at the beginning of the last paragraph. This office concurs in these suggestions, and recommends further omission of the phrase "which would have been considered a gift before the date hereof" appearing at the end of the proposed Revenue Ruling. It is believed that the use of such language is inadvisable since there has been no published Ruling announcing the previous position of the Service in this area. Furthermore, the Service has in the past indicated a policy

of asserting a gift tax in respect to certain renunciations of legacies by assuming such a position in *Hardenbergh v. Commissioner* (C.L.-8, 1952) 198 F. 2d 63, aff'g. 17 T.C. 166, and *William L. Maxwell* (1952) 17 T.C. 1589. Unless the proposed Revenue Ruling were to be revised to contain a lengthy discussion of the differences between the local law involved in those cases and the local law involved in Examples 1 and 2, any "change of policy" language might make it appear that the Service discriminated against *Hardenbergh* and *Maxwell* by asserting a gift tax against them several years prior to its adoption of the position it successfully argued in their cases. While omission of the phrases indicating that there has been a "change in policy" may leave some question as to why the Service has chosen not to apply gift tax liability retroactively in two of the cases described in the Revenue Ruling, it would seem preferable to omit such references than to be forced to discuss in the Revenue Ruling the numerous and complex problems of local law pertinent to the previous positions adopted by the Service in this area.

(Signed) John Potts Barnes
LAS
JOHN POTTS BARNES
Chief Counsel
Internal Revenue Service

CALipoitz:ls
4/30/56

APPENDIX 3

U.S. TREASURY DEPARTMENT
WASHINGTON 25

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE
T:P:A
R-346-

MEMORANDUM FOR: Honorable George M. Humphrey
Secretary of the Treasury

SUBJECT: Notice of proposed rule making--Regulations under provisions of the Internal Revenue Code of 1954 relating to the gift tax.

There is transmitted for your approval for publication in the Federal Register a notice of proposed rule making with respect to the Gift Tax Regulations (26 CFR Part 25) under chapter 12 of subtitle B and under certain sections of subtitle F of the Internal Revenue Code of 1954. The Gift Tax Regulations are applicable to gifts made during the calendar year 1955 and subsequent years.

The 1954 Code made comparatively few changes in the gift tax area. However, it presented an opportunity for a general revision of existing regulations which are of long standing and which are subject to clarification and elaboration in various areas.

Substantively, the proposed regulations are similar to existing regulations. The major changes are the direct

result of the enactment of the 1954 Code and may be summarized as follows:

(1) The regulations relating to the disallowance of the $3,000 exclusion with respect to gifts of future interests in property, proposed under section 2503, reflect two important changes made in the 1954 Code. First, where there has been a transfer to any person of a present interest in property (such as income for life), the possibility that the interest may be diminished by the exercise of a power will not cause disallowance of the exclusion if no part of the interest will at any time pass to any other person. Secondly, property transferred for the benefit of a minor qualifies as a present interest if specified conditions set forth in the Code are satisfied.

(2) The regulations proposed under section 2504 reflect the change made by section 2504(c) of the 1954 Code, which places a limitation on the rights of both the Government and taxpayers to revalue gifts made in prior calendar years for purposes of computing the total amount of gifts made in preceding calendar years. The 1939 Code did not contain any provision comparable to that set forth in section 2504(c).

(3) Sections 2501 and 2511 provide new rules for the taxation of gifts made by nonresident aliens. Under section 2501 the tax does not apply to gifts of intangible property made by a nonresident alien who was not engaged in business in the United States. Under section 2511 the tax applies, in the case of a nonresident alien, only to a gift of property situated within the United States, and shares of stock constitute property within the

United States only if issued by a domestic corporation. Since any regulations relating to nonresident aliens under one of these sections would be incomplete and not easily understood without reference to the regulations under the other section, the regulations relating specifically to gifts made by nonresident aliens have been combined and appear under section 2511.

(4) New regulations have been prescribed under section 2515 of the 1954 Code, which provides that, under certain circumstances, the transfer of property by one person to himself and his spouse as tenants by the entirety does not constitute a gift at the time of the creation of the tenancy, but that a gift may be made at the time the tenancy is terminated. However, a spouse may elect to treat the creation of a tenancy by the entirety as a gift, in which case the amount of the gift is determined under the general provisions of law relating to the making of gifts (generally the same as under the 1939 Code). There was no section in the 1939 Code which corresponds to section 2515. The regulations under the 1939 Code relating to the making of gifts at both the time of creation of a tenancy and at the time of its termination were limited in extent. The new regulations under section 2515 contain not only the regulations relating to the new provisions of law, but also the appropriate rules which were, in practice, applied under the 1939 Code, since upon termination of a tenancy in many cases it will be necessary to determine a portion of the value of the gift under section 2515 and the remaining portion of the gift under the general provisions of the law.

(5) New regulations have been prescribed under section 2516 of the 1954 Code which excludes from gift tax transfers made under certain property settlements. There was no corresponding section in the 1939 Code.

(6) The regulations under section 2523, relating to the marital deductions, have been expanded as a result of liberalizing changes made in the 1954 Code. A deduction is now allowed where a surviving spouse is given a legal life estate with a power of appointment over the remainder. In addition a deduction is allowed where a surviving spouse is given the right to income for life from only a portion of an interest in property plus a power of appointment over that portion of the interest.

Minor substantive changes have been made, to reflect changes made by the 1954 Code and to clarify existing regulations to facilitate administration. For the most part, the clarifying changes are based on recent court decisions and revenue rulings.

With respect to nonsubstantive matters, the proposed regulations reflect a more extensive change. The regulations have been arranged in accordance with the Code section to which they apply, in a manner similar to that followed in recent years in the issuance of income tax regulations. Many headings and examples have been added where considered helpful. Administrative regulations designed to assist donors in filing their returns and in paying the taxes shown thereon have been incorporated in the Gift Tax Regulations.

Commissioner

Attachment

APPENDIX 4

Washington, DC 20224

Person to Contact:
Mr. L Kirschner
Telephone Number:
(202) 566-4912
Refer Reply to:
TX:D:F:2 78-570
Date: Jul 25 1979

Mr. Geoffrey J. O'Connor
Burke & Burke
30 Rockefeller Plaza
New York, NY 20020

Dear Mr. O'Connor:

This is in further response to your July 21, 1978, Freedom of Information Act request for documents underlying the issuance of Treasury Decision 6334.

We are pleased to enclose selected materials from the files which you requested. We regret that we cannot provide you with the remainder of materials underlying the preparation of T.D. 6334. The materials are considered to be subject to the attorney-client and governmental privileges and are exempt from the disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552 by subsection (b)(5). We have also excised a portion of one of the documents and deleted its enclosures. This information is denied as it is considered to be exempt from the disclosure requirements in accordance with 5 U.S.C. 552(b)(3) since it constitutes return information which is specifically exempted by statute (26 U.S.C. 6103).

The enclosed Notice 393 describes the above cited exemptions and sets out the appeal procedures.

Sincerely yours,

(Signature Illegible)
Chief
Freedom of Information
Branch

Enclosures
Notice 393
Selected Documents regarding T.D. 6334

BEST AVAILABLE COPY

APPENDIX 5

	SYMBOLS	FLOOR	INITIALS
1. Technical Planning Division (Attention: Mr. Littleton)	T:P	4050	DATE
2.			DATE
3. CM-952 RECEIVED MAY 28			DATE
4.			DATE
5. TECHNICAL PLANNING DIVISION			DATE

FOR:

- ☐ Approval
- ☐ As requested
- ☐ Call me
- ☐ Correction
- ☐ Filing
- ☐ Full report
- ☐ Handle directly
- ☐ Immediate action
- ☐ Initials
- ☐ Necessary action
- ☐ Note and return
- ☐ Recommendation
- ☐ See me
- ☐ Signature
- ☐ Your comment
- ☐ Your information
- ☐ _____
- ☐ _____
- ☐ Prepare reply for signature of _____

Answer or acknowledge before _____

REMARKS: Control File No. M-311
Proposed Revenue Ruling
Re: Director of Internal Revenue
[redacted]

The attached file contains a ruling under the 1954 Code which is proposed for publication in advance of the regulations. Since it involves section 7805(b) of the Code it requires the Commissioner's approval for publication. It was inadvertently forwarded for the Commissioner's signature before submitting it to your office in accordance with established procedures for clearance with the Treasury Dept. Your consideration of the file is now requested. An early reply will be appreciated.

FROM: H. J. Knoch
Chief, Bulletin Branch

DATE: 5/25/56

(Use reverse side if necessary)

APPENDIX 6

Part 1

Section 2501. - Imposition of Tax

Rev. Rul.

A renunciation, release or relinquishment by a legatee or devisee under a will or by a beneficiary under a policy of insurance constitutes a transfer of property or property rights or interests subject to Federal gift tax under Chapter 12 of the Internal Revenue Code of 1954.

The Internal Revenue Service has recently received inquiries concerning the effect, for gift tax purposes, of State or local law respecting title to the property in cases of renunciations, releases and relinquishments of inheritances and legacies. Three typical cases concerning such transactions are stated below.

1. *A*, a residence [*sic*] of Texas, was legatee under the will of a decedent who died while domiciled in Texas. *A* renounced the bequest and the surrounding circumstances did not indicate that this act was a device or subterfuge to pass title or economic benefits to any particular person or persons.

2. *B*, a residence [*sic*] of North Carolina, was legatee under the will of a decedent who died while domiciled in North Carolina. Immediately on learning of the decedent's death, *B* renounced his legacy. Inquiry as to the persons who, as next to kin, might possibly benefit from such a renunciation disclosed that there were some persons who were heirs and natural objects of the bounty of both the decedent and the taxpayer, and they received benefits as the result of the renunciation; that there were other persons who were heirs of decedent, but not of the taxpayer, and those persons also benefited by the renunciation; and that there were other persons who were not the heirs of the decedent, but who were the heirs of the taxpayer, and who, because of the renunciation, lost potential interests in property.

3. *C*, a resident of New York, took out a life insurance policy payable to his wife, but retained the power to change the beneficiary during his lifetime. Subsequently, he and his wife were divorced, but he failed to exercise the power to change the beneficiary. *C* has since died and the wife remarried and refused to accept the proceeds of the policy. In order that the executor could collect the proceeds for the estate, the wife renounced her rights under the policy and released any claims which she might have against the insurance company.

Section 2501(a) of the Internal Revenue Code of 1954 imposes a tax "on the transfer of property by gift * * *." Sections 2511(a) of the Code states that "the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible * * *."

Section 86.2(a) of Regulations 108, which is made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, C.B. 1954-2, 47, states that the tax will be imposed "whether the transfer is in the trust or otherwise, whether the gift if direct or indirect, and whether the property is real or personal, tangible or intangible" and that "all transactions whereby property or property rights or interest are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax." Section 86.8 of the same regulations states that "transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts * * *."

Whether or to what extent the transaction in each of the three cases stated above is subject to the tax imposed by section 2501(a) of the Code does not depend upon title to the property being held by the party at the time he executes the renunciation, release or relinquishment. As was stated in *Burnet v. Murray Guggenheim*, 288 U.S. 280, Ct. D. 636, C.B. XII-I, 374 (1933), "Taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed—the actual benefit for which the tax is paid." In that same case, the court also said, "Congress was aware that what was of the essence of a transfer had come to be identified more nearly with a change of economic benefits that with technicalities of title."

In view of the foregoing, it is held that a renunciation, release or relinquishment by a legatee or devisee under a will, or by a beneficiary under a policy of insurance, constitutes a transfer of property or property rights or interest subject to Federal gift tax under Chapter 12 of the Internal Revenue Code of 1954.

With respect to such transactions as are set forth in examples 1 and 2 above, it has been concluded that, under the authority contained in section 7805(b) of the Internal Revenue Code of 1954, the ruling set forth herein will not be applied retroactively with respect to such renunciation which became absolute and irrevocable prior to _____, the date of this Bulletin. The non-retroactive effect of this ruling will not apply to any purported renunciation as set out in transaction 3 above.

APPENDIX 7

... a problem
position with respect to
this case. Wish you would
consider it from the
viewpoint of whether we
should send a short memo
to the effect that the proposed
revenue ruling is inconsistent
with proposed legislation, or
whether we should discuss it
with Mr. Tillotson for the
purpose of suggesting a discussion
with Mr. Keech.

ERSKINE H. MATFIELD

BEST AVAILABLE COPY

APPENDIX 8

OFFICE MEMORANDUM

UNITED STATES GOVERNMENT

T:P:A
CM-952

TO: Director, Special Technical Services Division
Attention: Chief, Bulletin Branch

FROM: Director, Technical Planning Division

SUBJECT: Proposed Revenue Ruling Relating to Section 2501 of the 1954 Code

The proposed revenue ruling (Control File M-311) was scheduled for publication in advance of the regulations, and was referred to this division for consideration in connection with the established procedure for clearance with the Treasury Department.

In the past the Service has followed the decisions of the courts in the cases of *Brown v. Routzahn*, 63 F (2d) 914, and *Hardenbergh v. Commissioner*, 198 F (2d) 63, in determining whether the renunciation of a gift, bequest, or inheritance constitutes the making of a gift. Pursuant to *Brown v. Routzahn*, the Service has taken the position that if the decedent's death did not automatically vest title in the beneficiary, a timely renunciation of the bequest would not constitute the making of a gift. However, pursuant to the *Hardenbergh* case, the Service took the position that if title vested immediately, then the beneficiary by renouncing the bequest gave up something legally owned by him and thereby made a gift. The

distinction between the cases is whether title *vested* in the beneficiary. The proposed revenue ruling would, among other things, abolish the distinction and hold that a renunciation under the circumstances present in the *Brown v. Routzahn* case (where the renunciation became effective before legal title vested in the beneficiary) constitutes the making of a gift.

At the time that gift tax regulations under the 1954 Code were being developed, consideration was given to the inclusion in the regulations of the rules in *Brown v. Rouzahn* and *Hardenbergh v. Commissioner*. The proposed published ruling was reviewed by this Division and by the Legal Advisory Staff in connection with the consideration given to this matter. All persons concerned believed that the distinction drawn by these court decisions was artificial, and that renunciations under both sets of circumstances should be treated in the same manner. However, several persons felt that a reversal at this time of the Service's prior position might result in legislation excluding from gift tax renunciations under both sets of circumstances, and, therefore, that the prior position of the Service with respect to cases coming within the *Brown v. Routzahn* decision should not be changed. Mr. Laurens Williams, at that time Assistant to the Secretary (and Head, Legal Advisory Staff) inclined to this view. As a result language has been inserted in the proposed gift tax regulations adopting the rules in these two court decisions. The language in the proposed regulations (section 25.2511-1(c)) on the subject reads as follows:

> " * * * The renunciation of a vested property interest, such as the interest of an heir or next-of-kin, or devisee in whom title immediately vests upon a decedent's death under local law, constitutes a gift to those persons who receive the

> property interest by means of the renunciation. On the other hand the renunciation of a gift, bequest, or inheritance, if under local law title does [not] immediately vest, is not a gift if the renunciation is complete, and is made within a reasonable time after knowledge of the existence of the interest. * * * "

Inasmuch as portions thereof are not in accord with the language of the proposed gift tax regulations, the proposed revenue ruling is returned for such disposition as you deem advisable.

Director
Technical Planning
Division

Attachment:
Bulletin Branch File

APPENDIX 9

T:P:A
CM-952

Director, Special Technical Services Division
Attention: Chief, Bulletin Branch

Director, Technical Planning Division

Proposed Revenue Ruling Relating to Section 2501 of the 1954 Code

The proposed revenue ruling (Control File M-311) was scheduled for publication in advance of the regulations, and was referred to this division for consideration in connection with the established procedure for clearance with the Treasury Department.

The language in the proposed regulations (section 25.2511-1 (c)) on the subject reads as follows:

> " * * * The renunciation of a vested property interest, such as the interest of an heir or next-of-kin, or devisee in whom title immediately vests upon a decedent's death under local law, constitutes a gift to those persons who receive the property interest by means of the renunciation. On the other hand the renunciation of a gift, bequest, or inheritance, if under local law title does not immediately vest, is not a gift if the renunciation is complete, and is made within a reasonable time after knowledge of the existence of the interest. * * * "

Inasmuch as portions of the revenue ruling are not in accord with the language of the proposed gift tax

regulations, it is returned with the recommendation that publication be withheld pending promulgation of its final gift tax regulations.

(signed John D.S. Littleton)
EHH
Director Technical Planning Division

Attachment:
Bulletin Branch File
WSGreen:arw-10-11-57

Initiator	Reviewer	Reviewer
P:A	TPA	T:P
Green	Hamblin	Littleton EHH
12/16/57	12/16/57	10/18/57

APPENDIX 10

BELL, BOYD, MARSHALL & LLOYD
135 SOUTH LASALLE STREET

CHICAGO
3

Air Mail

December 7, 1956

Mr. Paul Schmid
Office of the Chief Counsel
Room 5229
Internal Revenue Building
Washington 25 D.C.

Dear Paul:

I have finished going over the Gift Tax Regulations. Since some of my suggestions are really in the nature of questions, I thought it would expedite things if I sent you a memorandum of them, so that we can resolve them between us before I return a marked copy of the regulations to the Treasury. I am therefore enclosing several copies of such a memorandum. I suggest that if possible you telephone me after you have considered them.

I am also enclosing a draft of a proposed expediting memorandum.

I am sorry I have been a little longer about this than I had hoped to be.

Sincerely yours,

James P. Johnson

JPJ jes
Air Mail
Enclosures

copy to: Mr. Raphael Sherfy

Mr. Schmid's changes in the gift tax.

On page 22, paragraph (b) should the ninth line of this paragraph read "actuarial methods or actuarial method or other accepted valuation method."

On page 26, paragraph (1) the material in the parenthesis should indicate that the discretion lies with a trustee and the proviso portion of that paragraph should not be deleted.

On page 32, paragraph (c) the renunciation rule should not depend on testacy v. intestacy.

One page 33, paragraph (c) questions the partial disclaimer sentence.

On page 37, paragraph (1) in the first line after the word "property" insert the words "for less than an adequate and full consideration in money or money's worth."

One page 41, delete sentence inserted in margin.

On page 42, paragraph (b) in the third line from the bottom of the page strike the phrase "the gift is incompiete" and insert in its place "there is no transfer".

On page 43, paragraph (c) in line 5 after the word "beneficiarys" insert the word "other than himself", in line 6 place a period after the word "themselves" and strike the remainder of the existing sentence. Insert a new sentence reading "However, if the power is a fiduciary power limited by a fixed or ascertainable standard to name new beneficiarys, other than the donor, or to change the interests of the beneficiary as between themselves, the gift is completed.

On page 43, paragraph (d) valuation problem.

On page 44, paragraph (e) last sentence in the paragraph should not be deleted.

On page 44, paragraph (f) in the first sentence after the word "trust" insert the words "as trustee". In the second line eliminate the word "the" before the word "power" and substitute the word "a" after the word "power" strike the words "as trustee" and substitute therefor "without a fixed or ascertainable standard".

On page 45, paragraph (f) strike the period after the last word in the paragraph and add the phrase "and are not completed gifts".

On page 52, in the insert, insert the words "such as" before the word "is" in the fourth line from the bottom.

On page 54, second line strike "good will" and substitute "value".

On page 71, the sentence beginning "See, however, section 2515 . . . ." which was deleted from the regulations should be reinserted at the end of § 25.2512.

On page 76, paragraph (d)(2) after the word "gifts" the word "correctly" should be inserted. Paragraph (d)(4) after the word "gifts" the word "correctly" should be inserted.

In (d)(2) and (d)(4) of the same page the word "proper" should be stricken and substitute the word "spouse's".

On page 87, the last sentence in paragraph (2) should be put back in the regulations.

APPENDIX 11

U. S. TREASURY DEPARTMENT

Washington 25

Oct. 1, 1958

T:P:WE
R-346-1

MEMORANDUM FOR: Honorable Robert B. Anderson Secretary of the Treasury

SUBJECT: Proposed Treasury decision – Regulations under provisions of the Internal Revenue Code of 1954 relating to the gift tax.

There is transmitted herewith, with the recommendation that it be approved, a proposed Treasury decision which would issue the Gift Tax Regulations (26 CFR Part 25) under chapter 12 of subtitle B of the Internal Revenue Code of 1954. The regulations contained in the proposed Treasury decision are applicable to gifts made on or after January 1, 1955.

The proposed Treasury decision is substantially the same as that published as notice of proposed rule making in the Federal Register of January 3, 1957 (22 F.R. 53). In those areas where the Estate Tax Regulations and the Gift Tax Regulations interpret similar provisions of law, the Gift Tax Regulations have been conformed to agree with the positions taken in the Estate Tax Regulations. Among the provisions of law pertaining to the estate tax and the gift tax which are similar are those relating to valuation of

property, powers of appointment, charitable deductions, marital deductions, and certain administrative provisions relating to the time and place for filing returns and paying tax, the keeping of records, etc. In the case of the Estate Tax Regulations certain material found in the notice of proposed rule making was removed from the final regulations because of doubt as to the accuracy of the material, and certain subjects were not treated (or, if treated at all, were referred to in general terms only) because of lack of agreement as to the precise rule to be followed. Where such material and subjects also come within the scope of the Gift Tax Regulations, the same action was taken as in the case of the Estate Tax Regulations. Among these subjects are transfers for less than full consideration (including property settlements and transfers for support which do not come under section 2516), and the valuation of shares in open-end investment companies. A few significant changes were made in the portions of the proposed regulations which pertain to subjects peculiar to the gift tax. These changes may be summarized as follows:

Disclaimers.

Paragraph (c) of section 25.2511-1, as set forth in the notice, discusses certain acts which constitute the making of a gift. Among the acts discussed is the renunciation, or attempted renunciation, of property, or a property interest, passing from a decedent. In what was intended to be the application of the rules in *Brown v. Routzahn* (1933) 63 F.2d 914, cert. denied 290 U.S. 641, and *Hardenbergh v. Commissioner* (1952) 198 F.2d 63, cert. denied 344 U.S. 836, it was stated that where title to the property did not vest in the beneficiary or heir immediately upon the decedent's death, the renunciation of the property did not constitute the making of a gift, but that where title vested in the beneficiary or heir

immediately upon the decedent's death, the act of the beneficiary or heir in giving up what passed to him from the decedent constituted the making of a gift. Furthermore, in the notice the position was taken in paragraph (c) that a partial renunciation of property could not be made. Protests on these provisions were received. After reviewing these protests, we have reconsidered our position and now believe that the proper distinction between these two court cases turns on the question of whether under the applicable State law a beneficiary or heir can or cannot refuse to accept ownership of the property which passed from the decedent. Accordingly, we have revised paragraph (c) of section 25.2511-1 to reflect this change of position. Also, we have abandoned the position that a partial renunciation cannot be made, and paragraph (c) has been further changed to recognize a partial renunciation where it is effective, as such, under local law.

Annual exclusions for gifts to minors.

In general, section 2503 (b) authorizes an annual exclusion of $3,000 for gifts of present as against future interests. Section 2503 (c) then provides (in part) that a gift of property to a person under 21 years of age will not be considered a gift of a future interest in property if the property "may be expended . . . for the benefit of" the donee before his attaining the age of 21 years. In the notice of proposed rule making, it was indicated by way of example that the above-quoted condition of the section might be satisfied even though the trustee or custodian of the property did not have the unrestricted discretion to determine the amount and purpose of any expenditure for the donee. This example has been modified in order to point out that the trustee or custodian must have unrestricted discretion in these respects.

Section 2503 (c) further provides that in the event the donee dies before attaining the age of 21 years, the property must be payable to his estate or "as he may appoint under a general power of appointment." The position is taken in the notice that the power of appointment must be validly exercisable by the donee under the applicable local law (taking into account the fact that the donee is under 21 years of age). It is our opinion that Congress did not intend that the condition of the section relating to the power of appointment be satisfied by setting up a power of appointment in the donee that could never be used. Certainly, a literal reading of the statute supports such position, i.e., if the power was not exercisable, the property would not "be payable . . . . as [the donee] may appoint." Furthermore, it is our understanding that the purpose of section 2503 is to allow the annual exclusion for gifts to minors when they substantially own the transferred property (because gifts to adults receive such treatment). The minors do not substantially own the transferred property if, when they die under 21 years of age, the donor can control the disposition of the property (as he can if the minor is given a nonexercisable power, with gift over in default of appointment).

Only a few protests were received which objected to the position taken in the notice regarding the power of appointment. Such protests contain two main arguments. First, it is contended that the position taken in the notice is inconsistent with Rev. Rul. 55-518, C.B. 1955-2, 384, which would include in a decedent's gross estate under section 2041, the value of property over which the decedent "has at the time of his death a general power of appointment" even though such power is not exercisable because of the decedent's incompetency. It is our thought that the position in the notice is proper and that it can be reconciled with the ruling, since the

language contained in section 2503 (c) is different from that contained in section 2041 (see above-quoted material). However, if it should be determined that the position taken in the notice is inconsistent with Rev. Rul. 55-518, reconsideration could be given at a later time to the position in the revenue ruling, taking into account other related problems in the field of estate taxation.

Secondly, it is contended that Congress knew that persons under the age of 21 cannot generally exercise powers of appointment and that the inclusion of the power of appointment provision was intended to cover cases where minors were given nonexercisable powers. This argument does not seem convincing to us, especially since in some States powers of appointment can be exercised by persons under 21 years of age (e.g., some States allow a person 18 years of age to exercise powers of appointment).

Commissioner

Attachment

WSGreen:jk:10-1-58

[At least one dozen sets of initials and dates are at the bottom of this page.]

APPENDIX 12

Internal Revenue Service Private Letter Ruling
6612201590A
(Dec. 20,1966)

Citation
6612201590A

2511.00-00
Transfers in General (Gift V. Not a Gift)

December 20, 1966

* * *
* * *

This refers to your letter of September 16, 1966, and prior correspondence, wherein you request a ruling with respect to the Federal gift tax and income tax consequences of a proposed renunciation by the above-named taxpayer of an income interest in a trust, described below, with respect to which she is presently a joint income beneficiary.

You ask whether the proposed disclaimer would be deemed a taxable gift under the provisions of section 2511 of the Internal Revenue Code of 1954. You also ask whether the income accruing to the disclaimed interest should be taxable to her under sections 652 and 662 of the Code.

* * * created an inter vivos spendthrift trust on December 7, 1933. The trust instrument provided for net income of the trust to be paid to the taxpayer's mother, * * * during her life.

Paragraph SECOND(b) of the trust provides, in part, the following:

'Upon the death of said * * * the trustees shall pay in convenient periodic installments not less frequently than quarterly the net income of the trust estate, share and share alike, to the children of said * * * who survive her and to the issue per stirpes of any child who may have predeceased her or not having predeceased her may die before the termination of the trust herein created.'

Under paragraph SECOND(d), the trustor directs that the trust terminate 21 years after the death of the last survivor of the children now living of said * * * and the Trustees shall thereupon divide the principal of the trust estate remaining after all proper charges as herein provided for and pay the same share and share alike among the grandchildren and the issue per stirpes of any deceased grandchild of said * * *.

The trustor died on September 27, 1935. * * * died on January 4, 1936, survived by four children, * * *. Each of * * * children received a one-quarter shares of the trust income following her death.

* * * died on April 17, 1963, and * * * died on March 16, 1964, each survived by adopted sons. The Supreme Court of Pennsylvania held in an opinion entered on * * * (appeal of * * *), that the adopted sons were not entitled to succeed to the respective interest of their adopted fathers. Petition for reargument was denied on June 23, 1966. As a result of this decision, one-half of the income interests of the adopted sons became payable to * * * the taxpayer, and one-half to * * *. Upon hearing of the Supreme Court decision, the taxpayer, through her attorneys, advised the trustee that she wished irrevocably and unqualifiedly to refuse to accept * * * income interest provided she could do so under Pennsylvania law. Counsel for the trustee subsequently advised her that she could. You also indicate that the taxpayer never accepted dominion and control over any portion of * * * interest.

The trustees have retained all sums accruing with respect to that interest in a reserve account.

Section 2511(a) of the 1954 Code provides, in part, that the gift tax pertains to gifts indirectly made. On the other hand, section 25.2511—l(c) of the Gift Tax Regulations provides that 'Where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right to completely and unqualifiedly refuse to accept ownership of property transferred from a decedent * * *, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocable and effective under the local law. There can be no refusal of ownership of property after its acceptance. * * * In any case where a refusal is purported to relate only to a part of the property, the determination of whether or not there has been a complete and unqualified refusal to accept ownership will depend on all the facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under the local law.'

An income beneficiary of a spendthrift trust may renounce a portion of that income interest under the law of Pennsylvania. See Gallagher v. Smith, 223 F.2d 218 (1955).

The trustor expressed his intent to have the income interest of his grandchildren devolve to their issue, we construe the intent of the trustor to provide that any renounced income interest by the grandchildren shall pass to their natural children.

In view of the foregoing, it is held that taxpayer's proposed renunciation will not result in a taxable transfer of the interest for gift tax purposes to her natural children if such renunciation is executed within a reasonable time from the time that she first received notice of her right to the additional income interest. If the proposed renunciation is executed at the present time, the execution

would be effected within a reasonable time within the meaning of section 25.2511-1(c) of the regulations. Cf. Kathryn S. Fuller v. Commissioner, 37 T.C. 147 (1961). As indicated above, the taxpayer has not accepted the subject interest at the present time.

Section 652(a) of the Internal Revenue Code provides, in part, that the amount of income for the taxable year required to be distributed currently by a trust shall be included in the gross income of the beneficiary to whom the income is required to be distributed, whether distributed or not.

Section 301.3 of Title 20 of Purdon's Pennsylvania Statutes Annotated permits an income beneficiary of a Pennsylvania spendthrift trust to release or disclaim his right to income from the trust, provided that such released or disclaimed income passes to one or more of the beneficiary's descendants. The trust income proposed to be disclaimed by the taxpayer in the instant case would pass to her children.

Since the proposed disclaimer of trust income by the taxpayer would be effective and irrevocable under local law, the taxpayer would not be required to include in her gross income, under section 652(a) of the Code, the income subsequently accruing to the trust. However, income accrued to the trust which would be distributable to the taxpayer before she makes her disclaimer will be includible in her gross income, notwithstanding, the fact that it is actually paid to her children. Revenue Ruling 61-62, C.B. 1964-1 (Part 1) 221.

Very truly yours,

(Signed) Lester H. Wallace
Acting Chief, Estate and Gift Tax Branch

6612201590A
END OF DOCUMENT

APPENDIX 13

"QUESTION: Mr. Smith, when was it first made as clear as can be that the regulation means or meant what you now say it means? From the very time it was issued [1958]? Do you think that's the only possible reading of the regulation is the reading you give it?

MR. SMITH: [Stuart A. Smith, Esq. of the Solicitor General's Office]: Well, one can read property to mean the actual property that one puts in one's pocket, but the gift and estate tax is replete with the fact that for 40 years it has subjected itself-the tax has been subject to a future interest as well.

QUESTION: Well, do you think you've answered my question or not?

MR. SMITH: Well, one can always read things differently, but it seems-

QUESTION: But the first part of my question was when did it become perfectly clear that the Commissioner administered the regulation the way he is now administering it?

MR. SMITH: I can't answer that question because of the paucity of cases. I suppose that it became perfectly, absolutely clear with authority when the Tax Court decided the Keinath case [1972] because that was the first case that really dealt with the disclaimers. But it seems to me that the words-

QUESTION: That case got to the Tax Court. It certainly had the seeds long before that.

MR. SMITH: Well, perhaps the paucity of litigation suggests that people were disclaiming within a reasonable time and, you know, there just weren't any cases. I would simply say that the words-

QUESTION: At least the Commissioner didn't change his mind.

MR. SMITH: Absolutely not." (emphasis added)